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July 1, 2005

VIA ECFS

Ms. Marlene H. Dortch
Secretary
Federal Communications Commission
445 12th Street SW
Washington, DC 20554

Re: In the Matter of Second Periodic Review of the Commission's Rules and Policies
Affecting the Conversion to Digital Television (MB Docket No. 03-15)
Waiver of July 1, 2005 Digital Replication Deadline
WABC-TV, New York, New York, Facility ID No. 174

Dear Ms. Dortch:

American Broadcasting Companies, Inc. ("ABC"), the licensee of WABC-TV and permittee of WABC-DT, New York, New York, Facility ID No. 174, by its attorneys, hereby submits this request for waivers and extensions of the July 1, 2005 replication/ maximization deadline applicable to stations affiliated with a top-four network and located in the top 100 markets ("Replication Deadline") and related requirements.¹ As further set forth herein, WABC-DT cannot fully replicate or apply for a final DTV authorization at this time due to circumstances beyond its control. Specifically, WABC-DT's original facilities at the World Trade Center were destroyed in the September 11, 2001 attacks, and ABC has not yet finalized construction of more permanent replacement facilities. Nevertheless, WABC-DT has worked diligently to construct temporary auxiliary DTV facilities, from which it currently achieves 99.34% replication. To achieve 100% replication likely would require broadcasting from the World Trade Center site, and that will not be possible until recently-released plans for rebuilding a broadcasting tower at that site are finalized and the tower is constructed. Based on these grounds and others set forth herein, ABC submits that any necessary waivers and extensions are in the public interest.

¹ See Second Periodic Review of the Commission's Rules and Policies Affecting the Conversion to Digital Television, *Order*, 19 FCC Rcd 18,279 (rel. Sept. 7, 2004) ("*Second Periodic Review Order*").

July 1, 2005

Page 2 of 4

Background. WABC-DT built full-power DTV facilities at the World Trade Center and applied for a license to cover these facilities in July 2001.² While this license to cover application was pending, the September 11, 2001 attacks destroyed WABC-DT's facilities. After studying different locations from which it could restore service, ABC applied for and obtained special temporary authorizations ("STAs") for auxiliary DTV facilities at two New York sites—the 4 Times Square Building ("4TS") and the Empire State Building ("ESB").³ ABC later constructed auxiliary DTV facilities at both of these sites. ABC also recently obtained a construction permit for the auxiliary facilities at ESB.⁴

Current Replication Status. The population served by auxiliary operation at ESB pursuant to STA is 19,219,970 persons.⁵ According to the Commission, the population within WABC-DT's initial DTV allotted facilities is 19,346,711 persons. Thus, WABC-DT's current replication percentage is 99.34%.

Good Cause for Waiver. In its June 15, 2005 public notice ("*June 15 Notice*"), the Commission stated that it may grant waivers and extensions of the Replication Deadline if "good cause is shown for stations that are unable to provide the required service by the applicable deadline because of severe financial constraints or circumstances beyond a station's control."⁶ In this case, circumstances beyond ABC's control—specifically, the September 11, 2001 terrorist attacks—destroyed the site from which WABC-DT was operating. WABC-DT plans to construct more permanent replacement facilities, likely at one of its auxiliary sites or at the World Trade Center site, but cannot build those facilities prior to the Replication Deadline. However, while examining all potential permanent solutions, ABC has constructed and operated auxiliary DTV facilities at ESB that serve nearly all of the persons within the station's initial DTV allotment. In

² See FCC File No. BLCDDT-20010710ABU.

³ See FCC File No. BEDSTA-20041117AEL (4TS); BEXSTA-20050301AET (ESB); The facilities covered by the STAs are fully subsumed within the predicted 41 dBu contour of the station's initial DTV allotment while providing the required DTV city grade contour over the station's principal community of license.

⁴ See BXPCDDT-20040803ACD (granted Apr. 29, 2005).

⁵ See Engineering Statement (attached as Exhibit A).

⁶ See DTV Channel Election Issues – Compliance with the July 1, 2005 Replication/Maximization Interference Protection Deadline; Stations Seeking Extension of the Deadline, *Public Notice*, at 3 (rel. June 15, 2005) ("*June 15 Notice*").

July 1, 2005
Page 3 of 4

sum, the destruction of WABC-DT's original DTV facilities, coupled with its successful efforts to restore service, provide good cause for waiver. Accordingly, ABC respectfully requests that the Commission grant WABC-DT a waiver and six month extension of the Replication Deadline.

Other Special Considerations. In the *June 15 Notice*, the Commission stated that a station subject to the Replication Deadline "that intends to operate at facilities different from those authorized in an outstanding license or construction permit must file by July 1, 2005 an application for modification of the license or permit that is consistent with the outstanding DTV freeze" (the "Application Requirement").⁷ WABC-DT is unable to comply with this Application Requirement due to its unique situation. As indicated above, WABC-DT's original permitted DTV facilities were destroyed on September 11, 2001, and it has not yet determined the final site from which it will operate with licensed facilities. In the meantime, WABC-DT has constructed temporary auxiliary facilities from two sites, and obtained STAs to operate both of those facilities. These special circumstances provide good cause for WABC-DT's lack of compliance with the Application Requirement. Moreover, the Commission previously has stated that requirements similar to the Application Requirement do not apply to stations like WABC-DT.⁸ Thus, to the extent that the Application Requirement applies to WABC-DT, WABC-DT requests a waiver and extension on these grounds.⁹

⁷ See *id.* at 2.

⁸ See *Second Periodic Review Order* at ¶35 ("Notwithstanding this freeze, licensees are not prevented from filing modification applications that would resolve international coordination issues or when a broadcast station seeks a new tower site due to the events of September 11, 2001.").

⁹ The *June 15 Notice* also mentions that "requests for extension of an outstanding STA may be filed as part of a request for waiver of the replication/maximization interference protection deadline" and that such STAs "will automatically be extended pending action on the waiver request." *June 15 Notice* at 2. This statement could be read to suggest that current DTV STAs extend only through July 1, 2005. The terms of the special STAs held by ABC for WABC-DT auxiliary facilities—the Empire STA and the 4TS STA—currently extend beyond July 1, 2005. ABC believes that these STAs fall outside the scope of the DTV STAs mentioned in the *June 15 Notice*. However, to the extent that these STAs are deemed effective only through July 1, 2005, ABC respectfully requests waivers of this requirement and extensions of the Empire STA and 4TS STA.

July 1, 2005
Page 4 of 4

For the reasons set forth above, ABC respectfully requests that the Commission grant the waivers and extensions requested herein.

Please direct any questions or inquiries regarding this matter to the undersigned.

Respectfully submitted,

/s/

Tom W. Davidson, Esq.

cc: Shaun Maher, Esq. (via e-mail)

EXHIBIT A

ENGINEERING STATEMENT



**ENGINEERING STATEMENT
OF ALFRED E. RESNICK**

**CALCULATION OF
PERCENTAGE OF REPLICATION
ON BEHALF OF THE
ABC OWNED TELEVISION STATIONS**

I am a consulting engineer, an employee of the Carl. T. Jones Corporation, with offices in Springfield, Virginia. My education and experience are a matter of record with the Federal Communications Commission. I am a Registered Professional Engineer in the Commonwealth of Pennsylvania, Registration Number PE-027589E.

The ABC Owned Television Station Group has authorized this office to calculate the percentage of replication of service as required by the Commission on July 1, 2005. For each station studied, the FCC database was used to obtain the operating parameters of presently licensed facilities. These licensed facilities parameters were entered into a data input file and the FCC program TV_Process was then used to calculate the population receiving service, based on year 2000 US Census data.

The FCC Public Notice of December 21, 2004 instructed those desiring to calculate the percentage replication to use 'the attached Table II' as the basis for determining compliance with the Commission's 100 percent replication requirements discussed in paragraphs 78 through 87 of the Second DTV

Periodic Review Report and Order, released September 7, 2004 (19FCC Rcd 18,279)(“Order”).

The numbers that were taken from the December 21, 2004 Table II as instructed above, are shown in Figure 1. Figure 1 contains the call signs of the stations studied, and its Initial Allotment Facilities, and the population receiving service from this facility, and additionally shows the parameters of the licensed operation or those parameters that are contained in a pending application for license for the same station.

The last entry in the Table of the attached Figure 1 is the percentage of replication, determined by dividing the population served (within the noise limited contour not affected by terrain) by the population from the December 21, 2004 Table II DTV population entry (the digital replication facility population was used in order to precisely follow the informal instructions provided by FCC OET staff), and the resulting quotient, expressed as a percentage. This percentage value, was shown in the extreme right column.

Several entries in the December 21, 2004 Table II may contain typographical errors. One entry is the subject of its own statement. Others may be found that do not appear to be proper without consideration of the proper antenna patterns.

In each case studied where presently licensed facilities were the subject, a TV_Process input file was checked to determine the contents of the input data for the Initial Allotment parameters as well as the licensed parameters. In two cases

in particular, the replication antenna pattern and licensed antenna pattern were checked to determine if they were correctly represented. No changes were required to either licensed or replication antenna patterns.

The results of the calculations are contained in Figure 1, which is a tabulation of the DTV channel Number, the representation of the Initial Allotment Facilities from Table II, and the associated population count that would receive service from such a facility. The licensed facilities are shown next, with an FCC File Number and an abbreviated description of the facilities for reference, and the population that is predicted to receive service from this facility is shown in a manner to be easily associated with its facility.

The arithmetic was performed and the answer which was obtained by dividing the number of persons that are predicted to receive service from the presently operating facility by the number of persons predicted to receive service from the Initial Allotment as shown in the December 21, 2004 Table II, is shown as a percentage. From this table, one can determine, strictly based on the population numbers contained in Table II, whether the replication percentage is met or not.

Conclusion

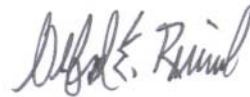
A Table of Replication Percentages has been constructed. From this Table, which is attached as Figure 1, the Replication Percentages of the facilities in the table can be determined. These Percentages are believed to be correctly

STATEMENT OF ALFRED E. RESNICK
ABC OWNED TELEVISION STATIONS
PAGE 4

obtained, following the instructions of the Commission's staff, the Public Notice of December 21, 2004 (DA 04-3922), the public Notice of June 15, 2005 (DA 05-1636), and through use of the Commission's TV_Process program.

This statement and the population numbers it contains were obtained directly by me or under my immediate supervision. The TV_Process runs and input data file construction were performed by Mr. Zar B. Aung (EIT). I verily believe the results shown herein to be true and correct.

Dated: July 1, 2005



Alfred E. Resnick, P. E.



Figure 1
July 2005

Channel	Facility	Table II Population	Existing Facility Population	Replication (%)
45	WABC-DT TABLE II (164 kW @ 491 m HAAT) WABC-DT BXPCDT-20040803ACD (219 kW @ 397 m HAAT)	19346711	19219970	99.34
53	KABC-DT TABLE II (456 kW @ 978 m HAAT) KABC-DT BLCDDT-19981112KF (182 kW @ 924 m HAAT)	14703770	14472769	98.43
52	WLS-DT TABLE II (154 kW @ 515 m HAAT) WLS-DT BLCDDT-20010109AAV (153.6 kW @ 514 m HAAT)	9388346	9388159	100.00
64	WPVI-DT TABLE II (1000 kW @ 332 m HAAT) WPVI-DT BLCDDT-19981112KE (500 kW @ 390 m HAAT)	9907662	9072936	91.57
24	KGO-DT TABLE II (621 kW @ 509 m HAAT) KGO-DT BLCDDT-19981216KF (561 kW @ 437 m HAAT)	6138724	6460542	105.24
32	KTRK-DT TABLE II (797 kW @ 588 m HAAT) KTRK-DT BLCDDT-20000215AAP (796.8 kW @ 562 m HAAT)	4847945	4795562	98.92
52	WTVD-DT TABLE II (1000 kW @ 607 m HAAT) WTVD-DT BLCDDT-19991117ABU (1000 kW @ 599 m HAAT)	2874074	2945440	102.48
09	KFSN-DT TABLE II (8.7 kW @ 614 m HAAT) KFSN-DT BLCDDT-20010531ACX (8.7 kW @ 614 m HAAT)	1357550	1444030	106.37
36	WJRT-DT TABLE II (1000 kW @ 287 m HAAT) WJRT-DT BLCDDT-20020429AAZ (860 kW @ 248 m HAAT)	2077486	2013105	96.90
19	WTVG-DT TABLE II (559 kW @ 305 m HAAT) WTVG-DT BLCDDT-20040225ABA (795 kW @ 221.5 m HAAT)	2520993	2063181	81.84